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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,490	09/02/2003	Jess Arthur Kinsel	JK-1-gw	2183

7590 06/24/2004
Michael I. Kroll
171 Stillwell Lane
Syosset, NY 11791

EXAMINER

DENION, THOMAS E

ART UNIT	PAPER NUMBER
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3748

DATE MAILED: 06/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/653,490

Applicant(s)

KINSEL, JESS ARTHUR

Examiner

Michael Nullman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 9-12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by LaHaye (U.S. Patent 3,864,908).

Re claim 1, as shown in Figure 2, LaHaye discloses an exhaust header for an internal combustion engine, comprising:

- a flange 14 – 16 for attachment of the exhaust header 10 to the engine, said flange having first and second sides wherein said first side is disposed contiguous to said engine;
- a plurality of conduits 20 - 22 having first and second ends wherein each of said first ends are connected to said second side of said flange and each of said second ends extend away from the engine; and,
- a plurality of fins 30 disposed in a spaced apart relationship about the periphery of each of said conduits wherein said fins extend radially from said conduits and longitudinally from substantially said first end to

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substantially said second end of said conduits to permit heat to be dissipated away from the exhaust header.

Re claim 2, as shown in Figures 1 and 2, LaHaye discloses an exhaust header further comprising:

- fins 30 substantially perpendicular to each of said conduits (see Figures 1 and 2).

Re claim 3, as shown in Figures 1 and 2, LaHaye discloses an exhaust header further comprising:

- a collector 23 for receiving each of said second ends of conduits 25 therein, wherein said collector 23 forms a cylindrical sleeve about said conduits for attachment to an exhaust system.

Re claim 4, as shown in Figures 1, 2 and 3, LaHaye discloses an exhaust header further comprising:

- a collector flange 24 disposed about said collector 23, said collector flange having a plurality of bolt holes 24' therein, said bolt holes for receiving a bolt for attachment of said collector 23 to an exhaust system.

Re claim 8, as shown in Figures 2 and 3, LaHaye discloses an exhaust header further comprising:

- heat dissipating fins 30, wherein the height of said fins taper toward said first and second ends of said conduits to permit said first and second ends to be easily attached to other components.

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5 – 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over LaHaye.

LaHaye discloses the invention as recited above, however, fails to specifically disclose that the header is to have four conduits to attach to four cylinders of an internal combustion engine, it is obvious to those with ordinary skill in the art that the number of conduits merely depends on the number of cylinders in the engine to which the header is to be attached.

Further, LaHaye also fails to disclose a specific diameter of the collector in the exhaust manifold. However, it is obvious to those with ordinary skill in the art that the diameter of the exhaust manifold is merely dependent on the flow rate of the exhaust.

Re claim 6, LaHaye discloses an exhaust header further comprising:

- heat dissipating fins 30, wherein said fins are extruded to permit the fins to be easily manufactured.

Even though LaHaye fails to specifically disclose the extrusion method for creating said fins, where a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is

upon the applicants to come forward with evidence establishing an unobvious difference between the two. See *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983).

5. Claims 9 – 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Nullman whose telephone number is (703) 305-2646. The examiner can normally be reached on Monday - Friday, 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on (703) 308-2623. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MHN

June 17, 2004



Michael Nullman

Patent Examiner

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THOMAS DENION
SUPERVISORY PATENT EXAMINER
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